

Minutes of the
Board of Minerals and Environment Meeting
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

10:00 a.m. CDT
May 14, 2003

CALL TO ORDER AND ROLL CALL: Chairman Richard C. Sweetman called the meeting to order. Secretary Kathy Johnson noted that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Kathy Johnson, Linda Hilde, Wilbert Blumhardt, Chuck Monson, Pat Healy, and Brian Radke.

BOARD MEMBER ABSENT: Mike DeMersseman.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM APRIL 16, 2003, MEETING: Motion by Monson, seconded by McCahren, to approve the minutes of the April 16, 2003, Board of Minerals and Environment meeting, as mailed. Motion carried.

SURFACE MINING ISSUES: Eric Holm was administered the oath by Lee McCahren. He testified regarding a transfer of liability, releases of liability, and acceptance of financial assurance (see attached matrix sheet).

Transfer of Liability: Motion by Blumhardt, seconded by Healy, to transfer liability for one site in Grant County from Bowes Construction, Inc., Brookings, SD, Mine License No. 83-164 to Peters Gravel, Milbank, SD, Mine License No. 01-729. Motion carried.

Releases of Liability: Motion by Johnson, seconded by Monson, to release liability for Wick Construction, Salem, SD, Mine License No. 83-181, one site in McCook County and one site in Miner County. Motion carried.

Acceptance of Financial Assurance Increase: Mr. Holm reported that this is the annual renewal and adjustment of the financial assurance amount for Wharf Resources. This financial assurance, also known as the cyanide spill bond, would be to cover costs to the state for responding to and remediating accidental releases of cyanide and other leaching agents at the Wharf site if the company failed to. This financial assurance is in addition to Wharf Resources' \$12.2 million reclamation bond and \$592,565 post-closure bond.

Mr. Holm stated that Wharf Resources submitted the increase in its financial assurance in the form of a cash bond, CD No. 30027503, in the amount of \$9,500. This amount is an increase

over last year's amount of \$395,500. The increase is due to inflation, as figured by the Construction Cost Index.

The department recommended that the board accept CD No. 30027503 with First Western Bank, Spearfish, in the amount of \$9,500 to supplement Wharfs existing CD No. 375011881287, U.S. Bank, Rapid City, in the amount of \$383,000 and CD No. 55060, First National Bank, Lead, in the amount of \$12,500 as proof of financial assurance. This increases Wharfs financial assurance to \$405,000.

Motion by Healy, seconded by Hilde, to accept CD No. 30027503 with First Western Bank, Spearfish, in the amount of \$9,500 as recommended by the department. Motion carried.

Wharf Letter of Credit: Mr. Holm reported that Wharf Resources has an existing letter of credit with Royal Bank of Canada. Wharf has decided to move all of its accounts to the Bank of Nova Scotia, New York Agency. Mr. Holm distributed copies of the new letter of credit, which Wharf intends to establish with the Bank of Nova Scotia.

Wharf Resources has requested that its existing letter of credit with the Royal Bank of Canada in the amount of \$12,000,000 be exchanged with the new letter of credit with the Bank of Nova Scotia. The new letter of credit was reviewed by Roxanne Giedd, Attorney General's Office. It basically follows the format that has been used for other letters of credit.

Mr. Holm requested approval of the exchange contingent upon the department receiving the original letter of credit.

Motion by McCahren, seconded by Johnson, to exchange Wharf's existing letter of credit with the Royal Bank of Canada in the amount of \$12,000,000 with the new letter of credit with the Bank of Nova Scotia in the amount of \$12,000,000.

Brian Radke asked what the financial state of the Bank of Nova Scotia is. Mr. Holm stated that staff researched the bank and found the bank has an A+ rating.

Mike Cepak noted that this is a large international banking firm.

Mr. Radke suggested that when the original letter of credit is forwarded to Mr. Sweetman for his signature, Roxanne Giedd submit a letter stating that she has reviewed it. He also suggested that the department ask the Division of Banking to investigate the bank and submit a letter stating that the institution is financially sound.

Mr. Healy asked what the relationship is between the Scotiabank and the Bank of Nova Scotia, New York Agency.

Mr. Holm stated that the Bank of Nova Scotia is a branch of Scotiabank. This is an international bank which has branches all over the world. In the United States there about eight different branch banks.

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Wilbert Blumhardt stated that the letter of credit should show the type written name of the person signing the document.

Mr. Holm said the department received, via fax, a listing of the names of the people who signed the document. The list will be attached to the original document.

Mr. McCahren said the board should require Wharf Resources to secure its letter of credit from a South Dakota bank.

Mr. Radke suggested that next year Wharf be asked to appear before the board to discuss what implications a requirement to secure the letter of credit from a South Dakota bank might have on the company.

Motion by Radke, seconded by Hilde, to amend the motion to approve the letter of credit in the amount of \$12,000,000 and to authorize Mr. Sweetman to execute the document contingent upon Roxanne Giedd, or someone else from the Attorney General's Office, submitting a letter to Mr. Sweetman stating that she has reviewed the letter of credit and that it is acceptable and meets legal standards; and contingent upon a representative of the state Division of Banking, or the appropriate bank-related state agency, submitting a letter indicating that they have reviewed the letter of credit, that the letter of credit is enforceable, and they have verified that the Bank of Nova Scotia, New York Agency is a financially sound institution. Motion carried.

The amended motion carried.

Special, Exceptional, Critical, and Unique Lands: ARSD 74:29:10:19 requires an annual update of the preliminary list of special, exceptional, critical, and unique lands. Each year the Board of Minerals and Environment is required to hold a hearing on petitions submitted to the department.

Mr. Holm reported that the department advertised for the 2003 update on January 31, 2003, in the Black Hills Pioneer, Sioux Falls Argus Leader, Rapid City Journal, Pierre Capital Journal, and Brookings Daily Register. No petitions to nominate lands to be placed on the 2003 preliminary list were submitted by the May 1, 2003, deadline.

Other Business: Mike Cepak and Bob Townsend answered questions from the board regarding the reclamation requirements at Homestake. They also answered questions about the mine filling up with water after pumping is discontinued.

BRIEFING ON PROPOSED PLAN TO RECLAIM LICENSED MINE SITES WHERE THE RECLAMATION BONDS HAVE BEEN FORFEITED: Mike Erickson provided a presentation on a proposed plan to reclaim licensed mine sites where reclamation bonds have been forfeited. He stated that the department has appeared before the board in the past to request forfeiture of sureties for operators so reclamation can be completed at these sites. In some cases, the site has been reclaimed working with operators that are already at the site to take on part of the reclamation liability. There have been some cases where reclamation surety was not sufficient to reclaim the site.

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SDCL 45-6 governs the mining of sand, gravel, rock to be crushed and used in construction, pegmatite minerals, limestone, iron ore, sand, gypsum, or shale used in the process of making cement or lime.

Mr. Erickson reported that since 1983 when the mine license law was passed, 787 operators have obtained state licenses for 3,777 sites in South Dakota.

The operators are required to post a bond in the amount of \$500 per acre of affected land or they may post a \$20,000 statewide bond in lieu of the required surety. Mr. Erickson stated that in most cases, the reclamation bond posted is not sufficient to completely reclaim a mine site.

Since 1983, there have been 12 reclamation bond forfeitures covering 17 mine sites. Two additional bond forfeitures covering three sites are anticipated in 2003. Five of the mine sites are pegmatite mines in Custer County. The remaining 15 sites are gravel pits in various counties throughout the state.

Mr. Erickson noted that four of the pegmatite mines are on US Forest Service land. The bonds were remitted to the U.S. Forest Service for reclamation. The sites have been reclaimed or partially reclaimed. Eight of the remaining sites have been fully or partially reclaimed using the forfeited bonds. Five sites have had no reclamation done. Bonds covering three sites will likely be forfeited in 2003. These sites have no completed reclamation.

The pegmatite sites that have been reclaimed by the U.S. Forest Service were licensed by William Wagner, North American Accounts, International Rose Quartz, and Wayne Nielsen.

Sites that have already been reclaimed with reclamation bonds include three sites for Wick Construction, Custer Gravel By-Products, Rauville Sand & Gravel, and International Rose Quartz.

The forfeited bond sites that still need to be reclaimed are Gordon Ziemer, Winter Concrete, Tyrone Peters, Gordon Olson, and three sites for Mike Ford.

Anticipated forfeiture sites to be reclaimed include Gene Steffes, and two sites for Herrick Services.

Mr. Erickson stated that funding for reclamation is in the form of a bond held for each specific site or operator's site and the Special Reclamation Fund. He noted that there are still not enough funds to allow total reclamation of all sites.

Factors the staff considered to determine what sites to reclaim were potential future mining, cost considerations, landowner's preference, past and potential natural reclamation, and environmental concerns.

The Special Reclamation Fund was established in 1971 and was funded through mining permit fees. Mr. Erickson stated that \$11,000 was used for partial reclamation of an abandoned uranium mine in Fall River County in the mid-1980s. The legislature eliminated the fund in 1982,

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however, the Board of Minerals and Environment was given the authority to use the remainder of the fund to conduct reclamation. Mr. Erickson noted that the Special Reclamation Fund contains about \$33,000. An additional \$15,400 in site-specific reclamation bond funds from forfeitures is also available.

Mr. Sweetman expressed concern about the state reclaiming the Winter Concrete site. Mr. Sweetman stated that his company has a statewide \$20,000 surety bond. There are many operators around the state that also have a \$20,000 statewide surety bond, and it is the common consensus that a company is liable for the reclamation of all of its sites even if the bond is not enough to complete reclamation. Mr. Sweetman noted that for the vast majority of those sites \$20,000 is not sufficient to reclaim the site. Mr. Sweetman stated that he cannot imagine why Winter Concrete would not have the liability to reclaim its own mine site.

Bob Townsend said the department's position is that Winter Concrete is liable but the statute of limitations for suing the company to complete reclamation has passed. It is not specifically outlined in SDCL 45-6, but there are other remedies in state law that would apply to allow the department to take action against an operator. Mr. Townsend said his staff is trying to reclaim these sites and this is an opportunity to use the Special Reclamation Fund, which has been sitting there for 15 years.

Mr. Sweetman said he does not have a problem with reclaiming a site where the operator is out of business or has died because this is a good use of the fund. He has serious reservations about using the fund to reclaim a site for a larger company that is still operating.

Mr. Erickson said this has been a concern for the department because for the larger operations, \$20,000 will not cover the cost of reclamation.

Mr. Erickson stated that staff has contacted landowners to arrange an on-site meeting. Staff has prepared site-specific plans and cost estimates and identified which sites or portions of sites should be reclaimed. Now the staff is presenting site-specific plans and cost estimates to the board for approval and to authorize expenditure from the Special Reclamation Fund. DENR would like to complete the reclamation projects during the 2003 construction season.

Staff intends to prepare requests for bids or send bid requests to contractors in the area or to landowners. Staff will meet with contractors and landowners on-site to identify what is expected. A contractor will be selected and a contract will be prepared. Staff will inspect the reclamation work upon completion for purposes of payment. Following that, payment will be made and the file will be closed.

Wilbert Blumhardt suggested some of these sites could be used by South Dakota technical schools to teach students who are learning how to use heavy equipment.

Jay Fenenga provided site-specific information and cost estimates for each of the sites the department proposes to reclaim.

Brian Radke asked what the language is with respect to failure to reclaim a site.

Mr. Townsend answered that the reclamation standards require rehabilitating the land for beneficial use.

Mr. Radke stated that if those reclamation standards apply to each site, the board should not consider using a state fund to reclaim these sites.

Mr. Townsend stated that there are not sufficient bond funds to totally reclaim the sites. By using the Special Reclamation Fund, staff believes more reclamation can be done. There are 10 mine sites that need to be reclaimed. The department has visited with Roxanne Giedd regarding reclamation liability and a new policy has been instituted where Notices of Violation are now being issued. The department secretary has the authority to revoke a mine license if a violation is found. Unlike the other environmental statutes, there is no penalty. This new process will establish the groundwork needed to proceed with legal actions against operators that fail to meet their reclamation obligations. Mr. Townsend said the department's goal is to cleanup these sites and move forward from here using the new process.

Motion by McCahren, seconded by Johnson, to approve the proposed plan to reclaim the mine sites discussed and to use the \$33,293 from the Special Reclamation Fund and \$16,931 from forfeited reclamation bonds to reclaim or partially reclaim ten sand and gravel mines in the state. Motion carried. Radke cast the only dissenting vote.

REQUEST PERMISSION TO ADVERTISE REVISIONS TO THE HAZARDOUS WASTE RULES: Carrie Jacobson requested permission to advertise for a public hearing in July 2003 to consider revisions to the hazardous waste regulations (74:28). The board adopts the federal hazardous waste regulations by reference. The rules in this update include the federal regulations codified from July 1, 2001, through June 30, 2002.

Changes to the rules include technical corrections and clarifications of the mixture rule, the addition of three wastes to the list of hazardous wastes, requirements applicable to hazardous waste facilities, and clarifies requirements for the management of specific hazardous wastes.

The department will issue a public notice in major newspapers across the state. The public notice will also be sent to the department's interested persons mailing list. The notice will specify the rules being updated and request written and oral comments. The board will conduct a public hearing to consider the rules on July 17, 2003.

Motion by Hilde, seconded by Healy, to authorize the department to advertise for a July 17, 2003, public hearing to consider revisions to the hazardous waste regulations. Motion carried.

ORAL REPORTS FROM LARGE-SCALE GOLD MINE OPERATORS: Eric Holm presented the board with the *2002 Summary of the Mining Industry in South Dakota*. This document is prepared every year by the Department of Environment and Natural Resources Minerals and Mining Program.

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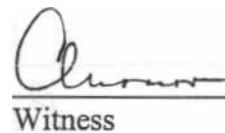
Representatives from the large-scale gold mining companies provided oral presentation of their annual reports to the board.

SouthPoint Resources Ltd., formerly Naneco Minerals - Rod McLeod (conference call)
LAC Minerals - Gene Fuller
Homestake Mining Company - Matt Zietlow
Golden Reward Mining Company - Kim Schultz
Wharf Resources - Kim Schultz

NEXT MEETING: The next meeting will be July 17, 2003, in Pierre.

ADJOURN: Chairman Sweetman declared the meeting adjourned at 3:00 p.m.


Secretary
7/17/03
Date


Witness
7-17-03
Date

BOARD OF MINERALS AND ENVIRONMENT MEETING

Training Center
Pierre

Date 5-14-03

ADDRESS

REPRESENTING

Eric Holm

DENR

Pierre

Tay Feringa

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C/

Mike Erickson

6

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May 6 Jones

SPL

Pierre

Chet Brokaw

Pierre

The Associated Press

Carne Jackson

DENR

Pierre

Bob Mercer

Picasso

Gene Fuller

Lead

LAC Minerals

Kim Schultz

Lead

Why Resources

Matt Zietlow

Lead

НМС

Karl Burke

Lead

HMC

South Dakota Board of Minerals & Environment

May 14 , 2003

<u>License/Permit Holder</u>	<u>License Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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Transfer of Liability:

Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	1078	VanTol Surety Company	Transfer liability.
		164011	N1/2 SE1/4 & S1/2 NE1/4 Section 3; T121N-R48W, Grant			

Transfer to:

Peters Gravel Milbank, SD	01-729		\$1,000	51778	Community State Bank, Stockholm	
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Releases of Liability:

Wick Construction Salem, SD	83-181					Release liability.
		181005	NE1/4 SW1/4 Section 15; T103N-R55W, McCook			
		181010	N1/2 SE1/4 Section 28; T105N-R55W, Miner			

Acceptance of Financial Assurance Increase:

Wharf Resources (USA), Inc. Lead, SD	356, 434, 435 & 464		\$9,500	30027503	First Western Bank, Spearfish	Accept \$9,500.
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